



7020-02

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1111]

### **Certain Portable Gaming Console Systems with Attachable Handheld Controllers and Components Thereof; Notice of a Commission Determination Finding No Violation of Section 337; Termination of the Investigation**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to affirm the conclusion of the presiding administrative law judge's ("ALJ") initial determination ("ID") that no violation of section 337 has occurred. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** On May 4, 2018, the Commission instituted this investigation based on a complaint and supplements thereto filed on behalf of Gamevice, Inc. of Simi Valley, California (“Gamevice”). 83 FR 19821 (May 4, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable gaming console systems with attachable handheld controllers and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,855,498 (“the ’498 patent”) and 9,808,713 (“the ’713 patent”). The Commission’s notice of investigation named Nintendo Co., Ltd., of Kyoto, Japan and Nintendo of America, Inc., of Redmond, Washington as respondents (collectively, “Nintendo”). *Id.* The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On February 14, 2019, the ALJ issued an ID in this investigation, finding no violation of section 337 by Nintendo. Specifically, the ID grants a motion for summary determination that Nintendo does not infringe claims 1, 10, 16, and 17 of the ’713 patent and claims 1 and 16 of the ’498 patent, that claim 10 of the ’713 patent is invalid, and that the technical prong of the domestic industry has not been met for claim 10 of the ’713 patent. Order No. 21 was predicated upon the ALJ’s earlier issued *Markman* order, Order No. 20, setting forth claim constructions of disputed terms, including “retention member,” “pair of modules,” and “fastening mechanism[s].” Gamevice petitioned for review of Order No. 21. Nintendo contingently petitioned for review of the claim term “retention member” and additional claim constructions not at issue in Order No. 21. The parties responded to the respective petitions.

On April 25, 2019, the Commission determined to review Order No. 21 in the entirety. The Commission also determined to review the three claim constructions, discussed in Order No.

20, on which Order No. 21 is based. Notice, Commission Determination to Review Order No. 21 in its Entirety; Request for Briefing (April 25, 2019). The Commission also asked the parties to brief two issues on review. *Id.* On May 6, 2019, the parties submitted their opening response to the Commission's notice of review. On May 13, 2019, the parties submitted their responsive submissions.

After considering Order Nos. 20 and 21, the parties' written submissions, and the record in this investigation, the Commission has determined that the terms "fastening mechanism[s]," "a pair of modules," and "retention member" are subject to means-plus-function treatment on modified grounds. The Commission affirms Order No. 21's findings on non-infringement, invalidity of the '713 patent, and Gamevice's failure to establish that its products practice the '713 patent to satisfy the domestic industry requirement. Accordingly, the Commission finds that no violation of section 337 has occurred. The investigation is terminated. The Commission's reasoning in support of its determinations is set forth in its concurrently issued opinion.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 4, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

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